

**Committee on the Peaceful
Uses of Outer Space
Legal Subcommittee**

Unedited transcript

644th Meeting

Monday, 4 April 2001, 3 p.m.

Vienna

Chairman: Mr. Kopal (Czech Republic)

The meeting was called to order at 3.13 p.m.

The CHAIRMAN: The Subcommittee is now in session. Distinguished delegates, I declare open the 644th meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space. Before commencing our substantive deliberations, I would like to briefly review our work for this afternoon.

On the basis of our discussions this morning, we shall suspend consideration of agenda item 4, status and application of the five United Nations Treaties on Outer Space pending the outcome of discussions in the informal consultations which will be conducted tomorrow afternoon. Therefore, we shall begin this afternoon by continuing our consideration of agenda item 5, information on the activities of international organizations relating to space law. Thereafter we shall continue consideration within the Plenary of items 6 and 7.

Time permitting, the Working Group on Item 6 shall then convene its first meeting under the guidance of Ms. Flores Liera of Mexico.

Item 5, information on the activities of international organizations relating to space activities

Distinguished delegates, we shall now continue our consideration of item 5 of our agenda, information on the activities of international organizations relating to space activities.

I do not have any speakers inscribed on the list of speakers for this particular point. Is there any delegation wishing to speak on this item? I see none.

Is there any observer of any international organization that would like to speak on this point? I see none. We will continue our consideration of item 5, information on the activities of international organizations relating to space law tomorrow morning.

As I indicated earlier today, a representative from UNESCO-COMEST will be making a presentation on the activities of that Organization under this item at tomorrow morning's meeting. I would inform delegations that following that presentation and any ensuing discussion which might take place, it is my intention to conclude consideration of item 5 at tomorrow morning's meeting. Therefore, I would urge those delegations still wishing to speak on this item to inscribe their names on the speakers list with the Secretariat as soon as possible.

Item 6, matters relating (a) to the definition and delimitation of outer space and (b) to the character and utilization of the geostationary orbit including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union

Distinguished delegates, we shall now continue our consideration in the Plenary of item 6 on our agenda, matters relating (a) to the definition and delimitation of outer space and (b) to the character and utilization of the geostationary orbit including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union.

In its resolution 50/27 of 6 December 1995, the General Assembly endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that, beginning with its thirty-ninth session, the Committee would be provided with unedited transcripts in lieu of verbatim records. This record contains the texts of speeches delivered in English and interpretations of speeches delivered in the other languages as transcribed from taped recordings. The transcripts have not been edited or revised.

Corrections should be submitted to original speeches only. They should be incorporated in a copy of the record and be sent under the signature of a member of the delegation concerned, within one week of the date of publication, to the Chief, Translation and Editorial Service, Room D0708, United Nations Office at Vienna, P.O. Box 500, A-1400, Vienna, Austria. Corrections will be issued in a consolidated corrigendum

The first speaker on my list is the distinguished representative of the United States of America to whom I give the floor.

Mr. S. MATHIAS (United States of America): Thank you Mr. Chairman. Mr. Chairman, my delegation wishes to express its general views on agenda item 6, matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union.

With respect to the question of the definition and delimitation of outer space, we have examined this issue carefully. Our position continues to be that defining or delimiting outer space is not necessary. No legal or practical problems have arisen in the absence of such a definition. On the contrary, the differing legal regimes applicable in respect of air space and outer space have operated well in their respective spheres. The lack of a definition or delimitation of outer space has not impeded the development of activities in either sphere.

We have not been persuaded by the reasons put forth for undertaking such a definition or delimitation. For example, some delegations have supported the notion of such a definition for its own sake but without a practical problem to address, undertaking such a definition would be a risky exercise, as explained more fully in a few moments. Other delegations suggest that a definition or delimitation is somehow necessary to safeguard the sovereignty of States. However, we are aware of no issue of State sovereignty that would be solved by defining outer space.

Even if there were a problem, the resolution of which a definition or delimitation of outer space would help to address, the Legal Subcommittee should proceed with all due caution. Whatever definition or delimitation were ultimately agreed upon would, by its nature, be arbitrary at worst, or, at best, be constrained by the current state of technology. For example, technological advances have increased the height at which aircraft can sustain flight, while they have decreased the height at which the orbital flight of space vehicles is possible. These technological advances will likely continue. It would be dangerous to the Legal Subcommittee to agree to an artificial line between air space and outer space when it cannot predict the consequences of such a line.

Mr. Chairman, to conclude, with respect to the definition or delimitation of outer space, our position continues to be that the Legal Subcommittee should not take on this issue until practical problems have been identified so as to make it absolutely necessary to do so.

Turning to the issue of the geostationary orbit, or GSO, first, the United States remains committed to equitable access to the GSO by all States as well as to the need to satisfy the real requirements of developing countries for GSO use and outer space telecommunications generally. Proper management of the GSO in these regards is best done through the ITU.

The ITU is the international body that is charged by the international community with the rational, efficient and economic use of radio frequencies and the GSO. The question of ensuring equitable access to the geostationary orbit is a matter that the ITU has been squarely, vigorously and satisfactorily addressing for a number of years. Moreover, we believe the ITU Constitution, Convention and Radio Regulations and the mechanisms under those authorities for international cooperation among countries and groups of countries, take into account the interests of States in the use of the GSO and the radio frequency spectrum.

Second, the United States cannot agree with those that argue that the GSO is, or can be, subjected to the sovereignty of States or that States may have preferential rights to the use of such orbits. We remain committed to the position that because this orbit, at approximately 36,000 kilometres above the Earth, is in outer space, its use is governed by the 1967 Outer Space Treaty. As you know, the Outer Space Treaty provides in Article I that "Outer space shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law".

Article II of this Treaty further states that outer space is not subject to national appropriation by claim of sovereignty or by any other means. Thus, a Signatory to this Treaty cannot appropriate a position in the GSO, either by claim of sovereignty or by means of use, or even repeated use, of such an orbital position.

Thank you for the opportunity to express our views on these important agenda items.

The CHAIRMAN: I thank the distinguished representative of the United States of America for his statement on item 6 of our agenda. Is any other

delegation wishing to speak here in the Legal Subcommittee on item 6? I recognize the distinguished representative of the Russian Federation.

Mr. V. TITUSHKIN (Russian Federation) (*interpretation from Russian*): Thank you very much. First of all, Mr. Chairman, I would like to express my congratulations to our colleague from Mexico for having been elected as the Chair of the Working Group. I truly hope that under her leadership we will be able to make progress.

Mr. Chairman, scientific and technical progress, new technologies, the commercialization aspect as well of the activity raises once again the problem of the definition and delimitation of outer space. Of course, there is not a natural boundary between the Earth and space which makes it difficult for States to have control over, for example, their national rights and about the part of the national territory which belongs to them as air space, as it were. It is not absolutely clear what exactly is the area where this takes place actually. There could be practical problems including, of course, in the near future.

If we look at international law, we can see some significant differences between the different regimes, the air space, outer space and so on, between the national space, air space and outer space. Air space is national and international and outer space is something which cannot actually be divided, it is indivisible and is open to common use.

Outer space and the celestial bodies. Of course, there is a prohibition for placing nuclear weapons there as well as any other weapon of mass destruction.

Now for air space, we do not have these restrictions established and States use the air space for the benefits of all countries as is the case for outer space.

Moreover, the exploration and utilization of outer space is the common province of mankind. States do not have any material responsibility or liability for damages caused to aircraft and have, therefore, no liability caused by space objects which belong to independent legal entities. So States have no liability for damage caused by the aircraft belonging to independent legal entities but they do have material liability for their national space activities. There are special features, special particular points to be remembered in this area.

The launching State takes on full responsibility, assumes full responsibility to compensate for damage caused by its space objects on the surface of the Earth or to an aircraft which is in flight. In the event that this type of damage occurs in space, is caused in outer space, then the liability is determined by fault. This is why the absence of a concrete delimitation between air space and outer space does not allow one to determine at what elevation the absolute liability terminates and at what altitude then a State begins to assume responsibility only in the presence of a fault.

There is no international register or list of space objects either, of aircraft. Countries do not have the right to carry out detection on foreign territories from their air space without prior and specific agreement. The crew of aircraft and their passengers, unlike different from astronauts in other words, are not considered by States as envoys of humankind or mankind. These differences, among so many others in the regimes which are applied, prove that it is necessary to establish a limit or a potential boundary between air space and outer space.

Thus, if there is a delimitation of outer space, it will be essential to give the right to space craft, space objects, a peaceful passage without being hindered through the air space of other States when there is a re-entry situation or a dropping out of orbit or de-orbiting. In a situation where they are going into orbit and re-entry into the Earth's orbit. Thank you very much.

The CHAIRMAN (*interpretation from Russian*): I thank the distinguished representative of the Russian Federation. (*Continued in English*) ... difficulties in translation of your presentation, particularly in the English version. So far as I could follow it because I followed your original version in Russian but from time to time I switched to the English translation and there have been some terminological mistakes in this translation. So I apologize to you on behalf of the translator but I would like to make an appeal to the translator to be very attentive to the specialized legal terminology that must be used in the translation.

INTERPRETER: Excuse me Mr. Chairman, there is no direct interpretation from Russian. We are in relay situation which does not happen often but we are in a relay situation.

The CHAIRMAN: I appreciate to speak on this item. The distinguished representative of Greece.

Mr. V. CASSAPOGLOU (Greece) (*interpretation from French*): Thank you very much. A couple of words, Mr. Chairman. The position of Greece is already well-known, well established for quite some time, in fact. I would just like to add a couple of words, first of all, about (a) in our agenda about the definition and delimitation of outer space.

Three years ago, we stopped our discussion or assessment of the questionnaires on space objects. We had a very important questionnaire at the time and then we sent this out and then we collected the responses from the various countries and subsequently silence. I am sorry for putting it this way but we did not hear a thing after that. I am sorry for bringing it this way but we attached very much importance to this work because we felt that it was critically important, first of all, to know what the attitudes of States were, if there are some practical aspects of the problem, whether or not it is a real problem or whether it is not a real problem. In other words, this business of delimitation. I am not referring solely to Space Shuttle type objects but I am referring to other objects which are currently being built, the hubs, the high altitude platform stations. These will be a great challenge for satellite telecommunications because there will be at least two results of space technology or aeronautical, aerospace technology which might actually cause very specific problems because of the applicability of air space law. So through you, I would like to ask either, well I could actually address this to the Office for Outer Space Affairs or directly to States who have not responded to the questionnaires, to try to make some progress, some headway in this whole process about the questionnaires on air space objects.

That sums up the comments that I wanted to share with our colleagues.

That was (a) of item 6. Now turning to (b), the geostationary orbit. The only thing that I would actually like to point out, and I am doing this once again, yesterday our eminent colleague, Lubo Sperek(?), in fact said a very long time ago that the geostationary orbit, without the radio frequencies associated to it, has absolutely no importance, is good for nothing, has no practical value in other words. So the problem then is to fully rigorously respect the legal regime and the regulations which govern the utilization of the frequency spectrum associated with the various orbital positions in the geosynchronous orbit. And in my opinion, it was actually necessary to reiterate the fact that there is a very significant problem even from the point of view of space law and not telecommunications regulations.

You are very well aware that in those frequency regions which are associated specifically with the various orbital positions to which the radio frequency planning does not apply, we do have nonetheless apply first come, first served, as a principle.

Therefore, it is a question of the abuse of this power, of this ability. So in my view, the overriding principle, in terms of having an equitable situation at all times, is to ensure that all countries, all States on the planet should be able to have access, easy access, not to the orbital position itself, but to the frequencies which are associated with those orbital positions which have to be usable because I have to say that there are a number of countries which have already developed major satellite systems. I am still talking about the geosynchronous orbit, the GSO. And because of this, they are limiting the utilization of this for others. So we have a situation where we have several questions, several issues that do fall under space law and should fall under space law.

Seen from the point of view of this practical problem, I think that it is entirely legitimate and it could also be qualified as reasonable, I am talking about the attitude of the developing countries, but once again I am not very happy with the term "developing" as the definition of developing countries. Unfortunately, this is the post-war United Nations practice to call them developing countries, but I am not very happy with it, but to be absolutely certain that at a given moment in time, they will be able to actually have easy access to the orbital position but not only the orbital position but the frequency which is associated with that orbital position, both in other words, so that such countries will be able to use that orbital position for their own communication system, via satellite, using a national platform. I am not talking about a regional platform or an international system.

Once again, I think it is incumbent upon us to reiterate, and this is our position, and I think that this is perfectly legitimate to say that the electro-magnetic space as such does not belong to States. I think that everyone has to accept this. It does not belong to States, even though States are speculating in an economic way, there is financial economic speculation, by allocating frequencies, renting frequencies, within the framework of space telecommunications, whether they are being used for ordinary telecommunications, mobile telecommunications or direct radio transmission. So our very great concern is to ensure that the international legal regime for outer space which is used for radiocommunications using satellite

systems, satellite-based, should be respected as being the common province of humankind. Thank you.

The CHAIRMAN (*interpretation from French*): I thank the distinguished representative of Greece for that contribution to the discussion drawing our attention to the minutiae(?) of the use of the geostationary orbit and associated frequencies.

(*Continued in English*) I do not have any other delegation. I recognize the distinguished representative of Argentina.

Mr. M. VERGARA (Argentina) (*interpretation from Spanish*): Thank you Mr. Chairman. First of all, my delegation would like to congratulate our Mexican colleague who has accepted the Chair of the Working Group and for specific reasons, our delegation will not be able to continue to exercise that position.

On the character and utilization of the geostationary orbit which is of particular interest for developing countries, my delegation would like to express its satisfaction with the understanding arrived at on the occasion of the last meeting of this particular Working Group.

On the question of definition and delimitation of outer space, my delegation feels that scientific and technological development as noted, with added activity in outer space, makes it necessary to have a consensus. This consensus is necessary with the advance of activity developed by States in outer space, giving rise to legal questions which call for answers setting the basic principles contained in space law treaties without any doubts.

Actually, the purely exploratory phase of purely exploratory activity in outer space has come to its end because problems emerging in the legal area have gone beyond pure theory. Proof of this, to illustrate this, just to give a couple of examples dealt with here, can be seen in the use of the geostationary orbit or at commercialization of space activities. Future controversy related to this activity, no doubt, could be aggravated without a clear delimitation of outer space. Thank you.

The CHAIRMAN: Thank you distinguished representative of Argentina for your statement. I now recognize the distinguished representative of Colombia to whom I give the floor.

Mr. C. ARÉVALO YEPES (Colombia) (*interpretation from Spanish*): Thank you Mr.

Chairman. My delegation would like to congratulate the representative of Mexico for accepting the task of chairing the Working Group. We are very proud to see her in the Chair and she can count on the cooperation and contributions from Colombia.

Mr. Chairman, I do not wish to repeat what the delegation of Colombia has already said on the question of the geostationary orbit and the general statement made. We are pleased with the agreement arrived at in the General Assembly. It is an agreement recognizing the principle of equity and that there should be reflected in the use and access to geostationary orbit and related bands, taking into account developing countries and I also pointed to two points of concern which were important to the delegation of Colombia. One of these is the interrelationship with the ITU.

It has been said clearly in this room that the ITU, in its technical capacity and competence where Member States are those directing its activity, that it should work in harmony with COPUOS in full synchronization so that the agreement can be effective as we all hope to see it.

So Mr. Chairman, I would like to stress that point and the other is that the question related to the orbit is, as agreed as last year, one which could be subject to change or opening because of new events or contributions. These are the points that my delegation wanted to make at this stage. Thank you.

The CHAIRMAN: Thank you distinguished representative of Colombia for your contribution to our discussion on item 6 of our agenda. Any other delegation wishing to speak or perhaps any observer of the international organizations who are presented here? Nobody. I regret very much to say that I do not see here this time the representative of the International Telecommunication Union and it is a pity because usually the contributions and statements made by this specialized agency of the United Nations system of organizations used to be very useful for our deliberations. I have just been told that they had apologized and not been able to come for this particular session but hopefully they will appear again at our next session and I would be very glad if the Secretariat of the Office for Outer Space Affairs could perhaps advise the ITU Secretariat to send a representative to our deliberations next year because we have very important and complicated questions here concerning the use of the geostationary orbit and allocation of frequencies and perhaps other aspects. And also we would love to be informed about the

developments within the ITU. This is also very important for us.

The meeting closed at 3.55 p.m.

If I do not see any other delegation or any other speaker who will contribute to these discussions I would consider this consideration at this meeting as closed and we will continue our consideration of item 6 in the Plenary of the Subcommittee tomorrow morning.

Distinguished delegates, we shall now continue consideration of item 7 on our agenda, review and possible revision of the principles relevant to the use of nuclear power sources in outer space. I do not have any delegation inscribed on the list of speakers for this particular item but is there any delegation wishing to speak on this item today? I see none. So we will continue our consideration of item 7 tomorrow morning.

Distinguished delegates, I will shortly adjourn this meeting of the Subcommittee in order to allow the Working Group on Item 6 to convene its first meeting under the guidance of Ms. Flores Liera of Mexico. Before adjourning the meeting, however, I would like to inform delegates of our schedule of work for tomorrow.

Tomorrow morning, we shall continue and hopefully conclude our consideration of agenda item 5, information on the activities of international organizations relating to space law. Thereafter, we shall continue our consideration in the Plenary of items 6 and 7. Time permitting, the Working Group on Agenda Item 6 might also convene its second meeting under the guidance of Ms. Flores Liera of Mexico.

As indicated earlier today, tomorrow afternoon we shall devote the entire meeting to informal consultations in order to consider the various proposals which have emerged within the context of agenda items 4 and 10. It means we would not try to repeat all the discussions about all aspects involved but we will talk about various proposals, specific proposals that have been raised during our discussions so far. Such informal consultations will take place within this Conference Room with the facilities of full interpretation services so that every delegation will be on equal footing when presenting its contribution in any language of its ability.

Are there any questions or comments on this proposed schedule? I see none. Therefore, I shall declare this meeting adjourned and invite Ms. Flores Liera of Mexico to convene the first meeting of the Working Group on Item 6. This meeting is adjourned.